

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE )  
IMPLANT PRODUCTS LIABILITY ) MDL NO. 2272  
LITIGATION )  
 )  
This Document Relates to All Cases ) Master Docket Case No. 1:11-cv-05468  
 )  
 ) Honorable Rebecca Pallmeyer

**MOTION FOR LEAVE TO FILE WRITTEN POSITION  
STATEMENTS AND FOR PRESENTATION OF POSITIONS IN COURT**

The defendants, Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Orthopaedic Surgical Products, Inc., Wilson/Phillips Holdings, Inc., d/b/a Zimmer Wilson/Phillips, Orthopaedic Technologies, LLC, d/b/a Zimmer Tri-State (incorrectly named as (1) Zimmer Tri-State d/b/a Tri-State Orthopaedic, (2) Zimmer Tri-State d/b/a Zimmer, Inc., and/or (3) Zimmer Tri-State d/b/a Tri-State Orthopedic), K. Michael Melia, d/b/a Zimmer Melia & Associates, Inc. (incorrectly named as Zimmer Melia & Associates, Inc.), Zimmer Orthobiologics, Inc., Zimmer Surgical, Inc., and Zimmer US, Inc. (collectively "Zimmer"), respectfully request that the Court (1) grant the parties leave to submit the written position statements discussed with the Court during its September 16, 2011, status conference, and (2) schedule presentation of the parties' positions in Court. In support of this motion, Zimmer states:

1. On September 16, 2011, the Court held its first status conference in this MDL. During that conference, the plaintiffs' lead counsel, James Ronca, suggested that the parties submit briefings or position statements outlining the litigation. Transcript of September 16, 2011, Proceedings – Rule 16 Conference Before the Honorable Rebecca R. Pallmeyer at 28.

2. The Court agreed with the suggestion of the plaintiffs' lead counsel, and further suggested that a presentation on the scientific or medical issues presented by MDL 2272 by demonstration or PowerPoint would be useful. *Id.* at 28-29.

3. Zimmer also agreed with the plaintiffs' suggestion regarding position papers and presentations. The Court then asked the parties to work together to schedule the presentations. *Id.* at 30-31.

4. On September 27, 2011, lead counsel for the parties conducted a teleconference on a variety of issues, including scheduling of the submission of position statements and presentations to the Court. Although the parties discussed scheduling the submission of position statements and presentations, they did not reach agreement on scheduling during the call. Counsel for the parties did agree that position statements should be limited to twenty pages.

5. Following the September 16, 2011, hearing and September 27, 2011, call between the parties' lead counsel, Zimmer began preparing its written position statement. Zimmer's position statement is close to complete.

6. The Court conducted its second status conference on October 7, 2011. No position presentations were scheduled for that conference, though the plaintiffs, and much more briefly Zimmer, discussed some aspects of their positions in abbreviated fashion in the course of their arguments regarding other matters at issue at that conference. The question of scheduling the submission of full position statements and presentations was not raised during the conference.

7. On October 11, 2011, counsel for Zimmer, Andrea Roberts Pierson, wrote to lead and liaison counsel for the plaintiffs and suggested a schedule for submission of position

statements and presentations. However, on October 14, 2011, Mr. Ronca responded that the plaintiffs no longer believe position statements or presentations are necessary.

8. The parties conferred by telephone on October 25, 2011, and Mr. Ronca confirmed that the plaintiffs continue to believe position statements and presentations are unnecessary.

9. The use of position statements and preliminary presentations to educate the Court about the facts, science, and technology involved in complex and scientific litigation is not only contemplated by the Manual for Complex Litigation, 4<sup>th</sup>, and the Reference Manual on Scientific Evidence, 2<sup>nd</sup>, but such procedures also have been utilized by other courts early in multidistrict litigation in order for the court to understand the fundamentals of the science at issue. *See* Manual for Complex Litigation, 4<sup>th</sup>, Rule 11.11 (2004); Reference Manual on Scientific Evidence, 2<sup>nd</sup>, § 2(B) (2000); *In re Vioxx Products Liability Litigation*, 2005 WL 756742, at \*1 (E.D. La. 2005) ("Plaintiffs and defendants shall submit to the Court by March 11, 2005 a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues . . .").

10. This MDL involves complex engineering and medical issues regarding the design, manufacture, implantation, and use of multiple artificial knee components. The plaintiffs allege that unidentified engineering design changes implemented by Zimmer, Inc., caused certain *NexGen Flex Femoral Components* prematurely to loosen. The plaintiffs further contend that an unidentified defect in the MIS Total Knee Procedure Stemmed Tibial Component Fixed Bearing Precoat ("MIS Tibia") caused the component prematurely to loosen. Zimmer contends that the overwhelming scientific evidence, and the documented high success rates of these products in the hands of thousands of doctors around the world, rebut the plaintiffs' claims of defect.

Presentation of the parties' positions on these issues to the Court relatively early in this proceeding may aid the Court at an important juncture in this MDL.

WHEREFORE, Zimmer respectfully requests the Court enter an order (1) permitting the parties to file simultaneous position statements no greater than twenty pages in length on November 23, 2011, or such other date as the Court deems appropriate, (2) scheduling 30-minute presentations of Zimmer's and the plaintiffs' respective positions for the status conference now scheduled for January 12, 2012, and (3) granting all other appropriate relief.

Dated: November 1, 2011

BAKER & DANIELS LLP

/s/ Joseph H. Yeager, Jr.

Joseph H. Yeager, Jr. (Ind. State Bar #2083-49)  
Andrea Roberts Pierson (Ind. State Bar #18435-49)  
300 North Meridian Street, Suite 2700  
Indianapolis, IN 46204  
Telephone: (317) 237-0300  
Fax: (317) 237-1000  
Email: jay.yeager@bakerd.com  
Email: andrea.pierson@bakerd.com

*Attorneys for Zimmer, Inc., Zimmer Holdings, Inc.,  
Zimmer Orthopaedic Surgical Products, Inc., Wilson/  
Phillips Holdings, Inc., d/b/a Zimmer Wilson/Phillips,  
Orthopaedic Technologies, LLC, d/b/a Zimmer Tri-State  
(incorrectly named as (1) Zimmer Tri-State d/b/a Tri-  
State Orthopaedic, (2) Zimmer Tri-State d/b/a Zimmer,  
Inc., and/or (3) Zimmer Tri-State d/b/a Tri-State  
Orthopedic), K. Michael Melia, d/b/a Zimmer Melia &  
Associates, Inc. (incorrectly named as Zimmer Melia &  
Associates, Inc.), Zimmer Orthobiologics, Inc., Zimmer  
Surgical, Inc., and Zimmer US, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on November 1, 2011, a copy of the foregoing Motion For Leave To File Written Position Statements And For Presentation Of Positions In Court was filed electronically. Parties may access this filing through the Court's system. I further certify that on November 1, 2011, a copy of the foregoing was sent by first-class United States mail, postage prepaid, upon the following:

Alan Daniel Mathis  
Johnston, Barton, Proctor & Rose LLP  
563 Brookwood Village, Suite 901  
Birmingham, AL 35209

Bharati O. Sharma  
Pogust Braslow & Millroad LLC  
161 Washington Street, Suite 1520  
Conshohocken, PA 19428

Don K. Ledgard  
Capretz & Associates  
5000 Birch Street, Suite 2500  
Newport Beach, CA 92660

James T. Capretz  
Capretz & Associates  
5000 Birch Street, Suite 2500  
Newport Beach, CA 92660

Jennifer L. Crose  
Becnel Law Firm, LLC  
106 W. Seventh Street  
P. O. Drawer H  
Reserve, LA 70084

John P. Lavelle , Jr.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Joseph N. Williams  
Price Waicukauski & Riley, LLC  
301 Massachusetts Avenue  
Indianapolis, IN 46204

Kevin R. Weiss  
Laureate Group  
1805 Kensington Drive  
Waukesha, WI 53188

Kim M. Schmid  
Bowman & Brooke Law Firm  
150 South Fifth Street, Suite 2600  
Minneapolis, MN 55402

Mark E. Gebauer  
Ecker Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101

Matthew J Sill  
Sill & Medley  
14005 N. Eastern Avenue  
Edmond, OK 73103

Richard J. Sapp  
Nyemaster, Goode & McLaughlin  
699 Walnut Street  
1900 Hub Tower  
Des Moines, IA 50309

Roxanne Conlin  
Conlin & Associates PC  
319 7th Street, Suite 600  
Des Moines, IA 50309

Thomas R. Anapol  
Anapol, Schwartz, Weiss & Schwartz  
1900 Delancey Place  
Philadelphia, PA 19103

William L. Bross, IV  
Heninger Garrison Davis, LLC  
2224 1st Avenue North  
Birmingham, AL 35203

\_\_\_\_\_  
/s/ Joseph H. Yeager, Jr.